

days, unless the Common Carrier Bureau issues an order rejecting the certification within that time.²⁰

To achieve Phase I-B status for Switched Access services, the LEC should be required to meet the “competitive checklist” described in paragraph 108 of the *Second Further Notice*, with the exception of items “g” (intraLATA toll dialing parity) and “h” (collocation in a significant number of LEC wire centers).²¹ IntraLATA toll dialing parity is a state issue, and it is not necessary for local exchange or interstate access competition to flourish. Rather, it is a method of allowing interexchange carriers to compete for intraLATA toll calls through “1+” dialing. As such, it is tied to the issue of whether, and how, the LECs will be allowed to compete for “1+” interLATA traffic when the current MFJ restriction on interexchange services by the BOCs is lifted. The Commission need not address this issue in determining the status of competition in the local exchange and interstate access markets.²² With regard to item “h,” collocation is a measure of actual competition, not the removal of barriers to competition. Therefore, collocation should be used to determine when a LEC would qualify

²⁰ See *Second Further Notice* at para. 113.

²¹ Most of the checklist items are irrelevant to Special Access, for which barriers to entry have largely been eliminated. This is evidenced by the entry of CAPs in High Capacity Special Access markets throughout the country even in states that do not allow competition for local exchange service.

²² If dialing parity is made part of the checklist, it should only concern inter-network calls between LECs and CLECs. That is, an end user served by a CLEC should not have to dial additional digits to terminate a call on the LEC network, and vice versa.

for Phase I-C treatment, which is triggered by the existence of actual competition.²³

When a substantial portion of a LEC's operating territory is open to competition, as determined by compliance with the checklist, a LEC should operate under the following regulatory framework:

Rate Structure	<ul style="list-style-type: none"> • Zone Structure for LS, CCL, and IC • LTS Recovered on Market Share Basis • Single Line/Multiline Structure for LS, CCL, and IC • Multiline CCL Recovery on the Basis of an IXC's Share of Presubscribed Lines • Increase in the EUCL Charge
Pricing Flexibility	<ul style="list-style-type: none"> • Switched Volume and Term Pricing • Alternative Pricing Plans • Market Trials • Greater Downward Pricing Flexibility (e.g., lower band limits of minus 50%)
Price Cap Baskets	<ul style="list-style-type: none"> • Consolidate Services Categories (Combine Services in Trunking Basket into Analog and Digital; Move the IC, except for tandem switching costs, into the Traffic Sensitive Basket)
Productivity Factor	<ul style="list-style-type: none"> • X - (a)

B. In Phase I-B, The Commission Should Allow The LECs To Begin To Restructure Their Access Charges.

As markets are opened to competition, the Commission should allow the LECs to begin the transition to a rate structure that reflects the costs of serving each segment of the market. Currently, access charges are averaged across study

²³ See Section VIII.A *infra*.

areas and customer groups regardless of the fact that costs vary significantly between urban and rural areas and between high-volume business customers and low-volume residential customers. For instance, NYNEX showed in its comments in the Universal Service Fund investigation that its New York State loop costs in sparsely populated rural areas are more than twice as high as the loop costs in the major cities.²⁴ In addition, DXCs pay the same usage-based Switched Access charges for access to business customers as they do for access to residential customers despite the fact that the business customers' higher volumes cause the LECs to collect revenues that are much greater than the cost of serving them. The recovery of long term support ("LTS") payments through the usage-based carrier common line ("CCL") charge also places an excessive burden on high-volume business customers. As NYNEX demonstrated, and as the Commission recognized, in the *USPP Waiver Proceeding*, the LECs cannot maintain such non-cost based rate elements when their markets are open to competition.²⁵ Therefore, the Commission should allow the LECs to begin to deaverage and restructure their rates in Phase I-B.

The chart above lists some of the types of restructures that the Commission should allow. The Commission should permit the LECs to

²⁴ See Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, NYNEX Comments, filed October 10, 1995, p. 17.

²⁵ See In the Matter of the NYNEX Telephone Companies Petition for Waiver, Transition Plan to Preserve Universal Service in a Competitive Environment, Memorandum Opinion and Order, FCC 95-185, released May 4, 1995 ("*USPP Waiver Proceeding*").

deaverage the Local Switching ("LS"), CCL, and Interconnection Charge ("IC") rate elements by zone, and to deaverage these rates between multiline business and single line business/residential categories. Since the multiline business EUCL charge already recovers essentially the full amount of the interstate allocation of common line costs, the Commission should allow the LECs to reduce the multiline CCL charge to zero and to recover those revenues from the IXCs through a flat charge per month for each line that is presubscribed to a particular IXC. The Commission should also allow the LECs to begin increasing the EUCL charge so that they can reduce, and eventually eliminate, the CCL charge. If the Commission decides to limit increases in the single line EUCL charge for public policy reasons, it should permit the LECs to deaverage the IC and to increase it for usage associated with single line end users. Finally, the Commission should allow the LECs to assess long term support payments directly on the IXCs based on each IXC's share of toll revenues, rather than, through the CCL charge. LTS payments have nothing to do with a LEC's common line costs, and the recovery of these payments through the CCL charge only encourages bypass.²⁶

²⁶ LTS should also be recovered by all local exchange service and access providers, LECs, CLECs, CAPs, etc., to further reduce the incentive for uneconomic bypass.

C. The Commission Should Allow Increased Pricing Flexibility Through Volume And Term Pricing, Alternative Pricing Plans, Market Trials, And Greater Downward Pricing Flexibility.

As LECs open more of their networks to competition, the Commission should allow additional pricing flexibility in the form of additional volume and term discounts, market trials, and greater downward pricing flexibility. The Commission should also allow the LECs to offer new alternative pricing plans ("APPs") as rate restructures, on 14 days' notice and with only a direct cost support showing. As described in the *Second Further Notice*, APPs should be defined as repriced versions of existing services.²⁷

As the Commission noted, it allowed the LECs to introduce volume and term discounts for Local Transport services when it opened the Local Transport market to competition by ordering expanded interconnection to Switched Access services.²⁸ However, the Part 69 rules do not permit volume and term discounts for usage-based Switched Access charges such as the CCL, LS, and IC charges absent a waiver. This should be remedied once a LEC's Switched Access

²⁷ See *Second Further Notice* at para. 40.

²⁸ See *id.* Although the Commission currently allows volume and term discounts for Switched Access Dedicated Transport services, it allows such discounts only where a minimum number of DS1-equivalent expanded interconnection circuits have been provided. This threshold should be removed. It was initially established to postpone discounts which might have advantaged larger DXCs until they could attain such discounts from LEC competitors. However, as the FCC has recently declared AT&T to be non-dominant in the interexchange market, the Commission should no longer be concerned about handicapping large carriers by restricting discounts on access services. The Commission has allowed the LECs to offer volume and term discounts for Special Access services without a competitive showing.

services are open to competition. Once a LEC has met the competitive checklist, it will begin facing additional competition for these usage-based rates from CLECs who will offer their own Switched Access services. For example, in New York and Massachusetts, CLECs are already offering local exchange services through their own switches, and they have been assigned over 102 NXX codes. As non-dominant carriers, they are not under any obligation to offer access charges that are averaged throughout the state, and they can offer discounts for high volume users and for customers who commit to term contracts. Therefore, when a LEC faces such competition, it should be permitted to offer volume and term discounts for usage-based Switched Access charges.

The LECs should also be allowed to conduct market trials for specified time periods to gain marketing information prior to committing to full scale deployment of new or repriced services. Market trials might include limited service offerings, promotions, and programs directed to geographic areas. Marketing trials would permit more cost effective introduction of services, and they would prevent the deployment of costly investment or expenses where demand for a new service might prove to be less than anticipated. They would also allow the LECs to test the market in the same way as unregulated, competitive firms. Permitting promotions and market trials would be consistent with the objectives of promoting efficient investment and innovation and encouraging market-based prices.²⁹

²⁹ See *id.* at para. 1.

Market trials should remain outside of price caps, since they would be offered only for a limited time. They should be filed on 45 days' notice to provide additional time for review by the Commission and interested parties. Such filings would provide information on the time period and geographic area to which the promotion or market trial would apply, as well as cost support. The notice period, cost support, and the fact that the services would be outside of price caps would ensure that the promotions or market trials would not affect the rates for other services.

In Phase I-B, the Commission should allow additional pricing flexibility in the form of lower band limits of minus 50%. This would encourage competitive responses while limiting the concern about predatory pricing. The Commission should not reduce the upward pricing flexibility limits, or prohibit subsequent rate increases, as discussed in the *Second Further Notice*, since the LECs will need some flexibility to rebalance rates over time.³⁰ The current upper service band index ("SBI") limits act as a ceiling on rates that would prevent a LEC from attempting a predatory pricing scheme, because they would prevent a LEC from recouping its losses if it priced services below cost in an attempt to drive out competition.

NYNEX strongly supports the proposal to allow the LECs to implement APPs. As competition develops, the LECs should be allowed to offer optional pricing plans to meet similar offerings by new entrants. Volume and term

³⁰ See *id.* at paras. 84-85.

discounts, one form of APP, have been offered for several years for Special Access services, and they have benefited customers without any adverse impact on competition. They should also be allowed for usage-based Switched Access services, which are cross-elastic with Special Access services.

APPs, as implemented by AT&T, were treated not as new services, but rather as rate restructures from a price cap perspective. That is, when APPs were introduced, they were incorporated immediately into price caps so that AT&T was given immediate index credit for the rate reductions. NYNEX believes that permanent APPs should be viewed and treated as rate restructures, rather than as new services, as APPs are generally rate reductions for which carriers should be given immediate credit. If the Commission is concerned about the reliability of the demand projections that the LECs would use to incorporate APPs into the price cap indexes, it could require the LECs to true-up the demand projections that they used to develop the price cap indexes when the APPs were filed with actual demand data after the service has been in effect for 90 days. The notice period and cost support for APPs should be the same as proposed for Track 2 new services, *i.e.*, 14 days' notice with only a direct cost showing. The direct cost showing would provide assurance that the rates would not be predatory.

NYNEX also agrees that the LECs should be allowed to offer APPs as promotional offerings for a period not to exceed 90 days. As proposed in the notice, promotional APPs could be offered on 14-days' notice with no cost

support. These offerings could be used to waive NRCs or to allow customers to try new products on a trial basis. Any revenue loss due to these promotions would be at the LEC's expense, and would not be recovered in other rates since the price reductions would not be incorporated into price caps with other services.

D. The Commission Should Allow The LECs To Consolidate The Service Categories.

In Phase I-B, the Commission should allow the LECs to consolidate their service categories and to restructure services into three baskets; Common Line, Switched, and Trunking. Consolidation of the price cap service categories would give the LECs additional pricing flexibility that would aid them in the transition to market-based rates.

The IC should be moved to the Switched Basket, because it primarily recovers contribution to universal service. The tandem switching portion of the IC should be retained in the Trunking Basket, because it recovers costs of tandem-switched transport. The service categories remaining in the Trunking Basket should be consolidated into Analog Services, Digital Services, and Tandem Switched Transport.

VII. Phase I-C Should Include Further Pricing Flexibility And A Lower Productivity Factor.

A. Phase I-C Would Apply When Barriers To Entry Had Been Removed In All Areas And Competitors Had Established A Market Presence.

Phase I-C would apply when a LEC could demonstrate (1) that barriers to entry had been removed in all areas and jurisdictions; and (2) the CLECs had established a competitive presence in areas representing 40 to 50% of a LEC's total business access lines with regard to Switched Access, or 40 to 50 percent of a LEC's Special Access/transport revenues, whichever was applicable. At this level of competitive market presence, the LECs would be constrained in their ability to exercise market power by raising prices or limiting supply. Either action could be countered by the CLECs, who would be in a position to offer lower prices and alternative sources of supply.

To attain Phase I-C status, a LEC should be required to file a certification that barriers to entry had been removed and that CLECs had established the necessary market presence. The LECs should be allowed to make such showings by referring to state and federal actions that had removed barriers to entry and by referring to data that the CLECs would report to the Commission on their market presence.³¹

³¹ The Common Carrier Bureau released a Public Notice on November 3, 1995, requesting comments on a proposal to collect information on the state of competition for local exchange and access markets. See CCB-IAD 95-110, released November 3, 1995. NYNEX is a long-standing advocate of direct data collection by the Commission on the extent of competition in the local exchange

NYNEX believes that fiber and switch deployment are the two key criteria of supply availability and market coverage by the CLECs. The Commission should also consider the number of wire centers in a geographic area where the CLECs had utilized expanded interconnection.

The LECs do not have ready access to such information, other than data on expanded interconnection. Therefore, the Commission should collect these data on a regular basis from all market participants, including LECs, CLECs, IXCs, wireless carriers, and other carriers offering telecommunications services. The data should include CLEC demand data to assist the Commission in determining when Phase II or III would be applicable for a particular service in a given area. IXC data could be used to verify demand data reported by competitors in the local exchange market.³²

Because the certification process would rely upon publicly-filed data and measurable criteria, it would be relatively straightforward. Therefore, unless the Common Carrier Bureau found grounds to deny a certification within 30 days, it should be presumed to be approved.

market, and NYNEX strongly supports the Bureau's proposal to begin collecting such data on a regular basis. The Commission should ensure that the information that would be provided in these reports would be sufficient to determine the applicability of the pricing flexibility phases that the Commission adopts in this proceeding. This would save the Commission and all parties from burdensome *ad hoc* data collection efforts in the future as the LECs seek to implement the pricing flexibility provisions.

³² The data that the Commission should require all market participants to report should be sufficient to determine service areas and services offered within those areas. See NYNEX Comments in CCB-IAD, filed December 11, 1995.

In Phase I-C, a LEC should be allowed to implement the following reforms:

Rate Structure	<ul style="list-style-type: none"> • Further Segment the Multiline Structure into "Small" and "Large" Business • Deaverage the EUCL by Zone • Establish Higher Single Line EUCL for Zones 2 & 3
Pricing Flexibility	<ul style="list-style-type: none"> • Unlimited Downward Pricing Flexibility • Ability to Offer Individualized Tariffs In Response To RFPs
Price Cap Baskets	<ul style="list-style-type: none"> • Combine Common Line and Switching into the same Basket (Leaving Two Baskets, Switched and Trunking/Special)
Productivity Factor	<ul style="list-style-type: none"> • X - (b)

B. Phase I-C Would Allow The LEC Additional Pricing Flexibility, Including The Ability To Offer Individualized Tariffs.

In Phase I-C, the Commission should allow additional pricing flexibility in recognition of the facts that (1) competitors would have sufficient market presence to prevent the LEC from charging excessively high access charges; and (2) the LECs would have to tailor their rates more closely to the characteristics of each market segment to meet competitive challenges. The LECs will need to offer pricing that distinguishes the small business market from the large business market in light of the differences in costs, demand volumes, and competitive alternatives in each market. The LECs would need to deaverage the EUCL charge because of variations in loop costs caused by density, distance from the central office, types of plant, and other factors. At this point, lower SBI

limits would have outlived their usefulness, because competition would drive prices down at the same time that it would prevent LECs from trying to offset rate reductions on some products with rate increases elsewhere. If a LEC tried to raise prices to uneconomic levels, it would simply encourage the CLECs to target that market, thus eliminating the LEC's ability to subsidize below-cost rates.

At this stage, it is essential for the LECs to have the ability to offer individualized pricing. Although the ability to deaverage rates by class of customer and geographic area is important, no generalized tariff offering will be sufficient in all circumstances. NYNEX's experience has shown that large customers such as DXCs, financial institutions, universities, medical complexes, and government agencies will, when given a competitive alternative, circulate a request for proposal ("RFP") for bids to meet their telecommunications needs. Competitors will develop individualized packages for such customers that meet their total telecommunications requirements and they will offer rates that reflect the economies of scale and scope in providing a package of telecommunications services. The LECs must be able to offer similar package pricing to have any hope of retaining a share of this market. Because these customers represent large amounts of demand, and RFPs typically seek multi-year term commitments, the LECs need the flexibility to offer individualized pricing at the outset of facilities-based competition in the local exchange and access markets.

In Phase I-C, the Commission should allow a LEC to develop individualized tariff offerings aimed at satisfying unique customer needs or

providing customized integrated service packages such as those offered by AT&T through its Tariff 12 and contract tariff offerings. The Commission allowed AT&T to offer Tariff 12 services even prior to granting AT&T streamlined regulation or non-dominant status. The Commission should allow the LECs to use individualized tariffs to respond to RFPs in competitive situations. Specifically, a LEC should be permitted to file such a tariff where (1) a customer has issued an RFP specifying the combination of services it requires; and (2) the customer has at least one alternative supplier who has responded to the RFP. This would ensure that individualized tariffs would be used only where necessary to respond to competition.

Finally, in Phase I-C, the Commission should allow the LECs to group their existing service categories into two baskets, Switched and Trunking. The Switched Basket should include Common Line and the other service categories that had previously been consolidated into that basket. The Trunking Basket would include all Switched Access and Special Access transport services.

VIII. Phase II Should Allow For Streamlined Regulation When A Local Exchange Carrier Has Lost A Specific Percentage Of Demand For A Service In A Geographic Area.

A. Streamlined Regulation Should Be Based On Measurable Loss Of Market Demand.

Phase II, as proposed in the *Second Further Notice*, would allow streamlined regulation of a LEC's rates based on a showing of actual competition.³³ Under streamlined regulation, tariffs would be filed on 14 days' notice, without cost support, and would be presumed lawful. Rates under streamlined regulation would not be subject to price cap index ceilings or upper and lower SBI limits.

Unlike Phases I-A, I-B, and I-C, which would be applied based on total company characteristics, Phase II treatment would be applied by service, and by geographic territory, where a LEC faces a certain level of competition.³⁴ This reflects the fact that competition does not develop ubiquitously. It tends to develop first for high-margin services in areas of high customer density and low cost, and later it expands geographically and across product lines. A LEC can be expected to lose significant demand in the markets for individual services in defined geographic areas at the same time that it has no significant competition

³³ See *Second Further Notice* at paras. 127-29.

³⁴ See *id.* at paras. 3, 133. If a LEC has certain services and geographic areas already under streamlined or nondominant regulation, then those services and geographic areas would be included as open to competition or with a competitive presence when the LEC certifies it has met the criteria for Phase 1-B or Phase 1-C.

for low-margin services and in areas where competitors have not yet extended their networks. Therefore, the Commission correctly recognized that a determination that a LEC should be subject to streamlined regulation in Phase II (and to non-dominant status in Phase III) should be based on an analysis of the LEC's market power for each service, in each geographic area.

The Commission proposes that a LEC would be able to seek streamlined regulation by filing a petition showing that a service is subject to "substantial competition," based on an analysis of demand responsiveness, supply responsiveness, market share, and the pricing of services below the price cap ceiling.³⁵ This proposal was based on the analysis that the Commission used to give streamlined treatment to AT&T.³⁶ NYNEX does not agree that the AT&T analytical framework is appropriate for the LEC markets.

The LECs interstate access markets are significantly different from AT&T's national interstate market. The most significant difference is that AT&T serves a nation of consumers made up of millions of residential and small business customers and a few sophisticated, large, national business users. However, the LECs' interstate access markets are primarily composed of a limited number of carriers, with three huge, highly sophisticated, interstate carriers (AT&T, MCI and Sprint), and large, sophisticated, business customers.

³⁵ See *id.* at paras. 133, 151.

³⁶ See *id.* at par. 128.

These customers have the ability to abruptly alter the competitive complexion of the LECs' interstate access markets.

More importantly, the AT&T approach would be administratively unworkable for the LECs. Considering the number of price cap LECs, the number of distinct services that they provide, and the number of relevant markets across the country, the Commission could be faced with hundreds of petitions for streamlined and non-dominant status. Each petition would have to be supported by extensive economic analysis and statistical data, and it would probably generate significant pleadings in the comment cycle. The burden on the Commission's staff of evaluating the evidence and issuing orders would be insurmountable.

The Commission should establish measurable criteria at the outset for determining when a LEC should be presumed to have lost sufficient share of demand to permit streamlined regulation. These criteria should be based on data reported to the Commission by all market participants, including DXCs, CAPs, CMRS providers, cable TV companies, LECs, and others, which would be public and easily verifiable. This would provide predictability to the industry, and it would encourage the industry to compete in the marketplace rather than in regulatory proceedings.

NYNEX proposes that a LEC be subject to streamlined regulation when it submits a certification letter to the Commission showing that it has lost 15

percent or more of the demand for a service in a particular geographic market.³⁷ This would be similar to the criteria that the Commission uses to determine when there is effective competition in the cable TV market. In determining when cable systems are subject to competition, the Commission requires a demonstration that another multichannel video programming distributor offers service to 50% of the households in a franchise area, and that 15% of the households subscribe to that distributor's service.³⁸ These criteria are appropriate for determining when local exchange services are subject to effective competition. At this level of competitive supply and demand loss, the LEC would no longer be in a position to exercise market power by raising prices or restricting output.

NYNEX's own experience in the High Capacity Special Access market shows that these criteria define effective competition. NYNEX's SBIs for the High Capacity Special Access service category have been below the upper SBI limits since the beginning of price caps in 1990.³⁹ At that time, the CLECs had a relatively small share of the Special Access market. Yet, NYNEX was not able to set prices at the highest level. Indeed, NYNEX has reduced its High Capacity

³⁷ The certification should be presumed granted within 30 days unless the Commission makes a finding within that period that the standard has not been met.

³⁸ See 47 C.F.R. Section 76.905.2.

³⁹ The SBI for the Hi Cap/DDS service category reached the upper SBI limit only in the 1995 Annual Access Tariff Filing, when NYNEX was required to reduce its interstate access rates by \$82 million due, primarily, to the re-initialization of the price cap indexes and the retroactive reduction in OPEB costs.

rates continuously from 1990 to the present.⁴⁰ Despite these reductions, NYNEX experienced a steady loss of market share during this period.⁴¹ Without the reductions, NYNEX's market share would have been even lower.⁴²

This shows that, once the CLECs have demonstrated the ability to serve a substantial portion of the market, the marketplace replaces price caps as an upper limit on rates. Price caps would not be necessary to prevent excessively high rates in the services that were placed under streamlined regulation, because competition would create continuous pressure for rate reductions in those

⁴⁰ In 1990, NYNEX's rate for a DS1 Channel Termination was approximately \$300. Today, NYNEX charges only \$ 200.

⁴¹ In 1993, when NYNEX began studying market shares, the CLECs and competitive access providers ("CAPs") had captured 43% of the High Capacity Special Access/dedicated transport market in New York and 26% in Boston. Today, NYNEX estimates that the CLECs and CAPs have 50% of the market in New York and 37% of the market in Boston.

⁴² This does not mean that the Commission should use below-cap pricing as a criterion for streamlined regulation. There are many factors that determine whether a LEC's prices will be at or below the cap. As the Commission acknowledged in the *Second Further Notice*, AT&T was allowed to use APPs to create "headroom" under its price cap system and to offset increased prices for other services. The LECs have not had this ability, because the price cap rules for the LECs require them to treat discount plans for existing services (such as volume and term discount plans) as new services. This places the discounted service outside of price caps until the next annual filing, at which time the incorporation of the services in the price cap indexes does not create any headroom. In addition, the LEC price cap indexes include downward exogenous adjustments for separations changes, inside wire amortizations, reserve deficiency amortizations and other required adjustments. Also, the initial targeting of rates affected the ability to price below cap. For instance, the New England Telephone rates that were used to initialize price caps were not targeted to the allowed rate of return, and were a major factor in NYNEX's lower formula adjustment for the 1991 calendar year. Despite these differences, it is noteworthy that for a majority of the time under price caps, NYNEX has priced many of its services below the upper SBI limits, and it has never filed an above band filing for any service category.

services. Excessively low rates for these services would also not be a concern, since the PCI and SBI upper limits on the services that remained within price caps would prevent the LEC from raising rates in those categories to offset any losses in the services that were given streamlined treatment. Therefore, when a LEC has lost 15% of the demand for a service in a geographic market, the rates for that service should be taken out of price caps.⁴³

B. The LEC Should Define The Geographic Market And The Product Market For Streamlined Regulation.

In the *Second Further Notice*, the Commission proposes standards for defining the relevant geographic market and the relevant product market in determining the level of competitiveness.⁴⁴ NYNEX agrees with the Commission's recognition that a single product market is inappropriate⁴⁵ and that the relevant geographic market must be narrow enough to only encompass competing access services for the same set of customers.⁴⁶ However, NYNEX does not agree with the Commission's tentative finding that density-based zones reflect the relevant geographic markets.⁴⁷

⁴³ Supply availability by the CLECs will have already been established in Phase I-C, which would require a showing that the CLECs have a competitive presence in areas representing 40 to 50% of the LEC's business lines or 40-50% of the LEC's Special Access/transport revenues.

⁴⁴ See *Second Further Notice* at paras. 116-26.

⁴⁵ See *id.* at par. 117.

⁴⁶ See *id.* at par. 120.

⁴⁷ See *id.*

As the Commission has proposed, the relevant product market must recognize the significant differences between traffic sensitive, trunking and interexchange services. In addition, NYNEX proposes that, for the traffic sensitive services, the Commission should recognize the differences between multiline and single line classes of customers. The Commission has recognized the distinction between multiline and single line users in its analysis of the interexchange market. In 1991, the Commission provided relief for AT&T's large business services prior to affording similar relief for the small business and residential customer categories in 1995. In addition, it is recognized that large sophisticated business customers have the greatest elasticity of demand and are also likely to be the first customers with competitive options. The multiline customer category can be viewed as a surrogate for the class of medium to large business customers, while single line customers represent residential and small business customers.⁴⁸

While the Commission's proposal to use the density zones developed by the LECs in providing expanded interconnection has merit,⁴⁹ density zones are inappropriate in some circumstances. The density zones were developed on the basis of interstate traffic density by wire center and not on competitive conditions. In addition, the density zones were determined company wide and were scattered in a checkerboard pattern throughout the company's service area.

⁴⁸ There also may be a need for further distinction between very large business customers, *e.g.*, over 15 lines, and other multiline business customers.

⁴⁹ See *Second Further Notice* at para. 120.

Therefore, there will not always be a strong correlation between zone offices and the extent of competition in an area. Competition has evolved in different areas at different rates. The areas where competition has first appeared have generally been in highly dense areas in and around zone 1 offices. But competition has not evolved in all zone 1 offices throughout the areas served by the LECs, nor has it been confined to only the zone 1 offices.

In the areas served by NYNEX, the region experiencing the most competition is LATA 132. In this area, competition first emerged in 1985, and it quickly expanded from southern Manhattan to the rest of New York City and its suburbs in Long Island and Westchester county. This area is composed of zone 1, 2 and 3 offices. In the Boston metropolitan area, competition has evolved similarly, first in downtown Boston and then out to the suburbs. This area is also composed of zone 1, 2 and 3 offices.⁵⁰ In some of NYNEX's zone 1 offices, there are limited competitive developments, while in some of the zone 3 offices in and around NYNEX's most competitive areas there is already fierce competition.

The LEC should identify the geographic zone in its certification letter. The relevant geographic market could be a LATA, an MSA, or a smaller area served by a group of contiguous wire centers within a community of interest. By definition, such areas would be limited to those areas where the level of demand loss by the LEC would be sufficient to meet the standard for

⁵⁰ See Attachment C.

streamlined regulation. A LEC would only be able to remove rates from price caps in areas where it has lost at least 15% or more of demand for a service. Therefore, the LEC would define the area for streamlined regulation in a way that reflects the ability of the market to discipline prices.

The Commission should not be overly concerned that LECs would petition for reduced regulation for small groupings of wire centers because the administrative burdens this would impose on the LEC, such as maintaining different prices and billing system changes, would make such efforts impractical. Instead, the LECs would probably attempt to make showings for larger areas meeting the necessary competitive criteria so that they could develop efficient marketing plans and billing procedures.

IX. Phase III Should Provide Non-Dominant Status When Services Have Been Subject To Streamlined Regulation For 1 Year And Competition Has Not Been Impeded.

In Phase III, the Commission proposes to allow a LEC to seek non-dominant status for a particular service in a particular market.⁵¹ In the past, the Commission has defined carriers as dominant or nondominant in the market as a whole and not for the provision of specific services. In this proceeding, the Commission has decided that a less encompassing definition of market power for the LECs would be appropriate.

⁵¹ See *id.* at para. 153. For non-dominant services, the LECs would file tariffs on 1 day's notice with no cost support, and the tariffs would be presumed lawful.

NYNEX agrees that LECs should be allowed to be regulated as nondominant with respect to particular services and geographic markets. Also, a LEC should not be considered dominant when it enters a new geographic market or a new service market, such as long distance.

NYNEX proposes that a LEC be allowed to file a certification for nondominant status when it has shown that services in a particular area have been given Phase II treatment for one year and that competition has not been impeded during that period. Competition should be presumed to have been unimpeded if the CLEC portion of market demand has not diminished in the interim and if the LEC has been unable to raise prices or restrict output. The Commission should be able to verify such a showing easily with the demand data that it will collect from all market participants. In addition the Commission could consider the number of complaints filed against the LEC that were found in favor of the complainant as an indication of the LEC's ability to exercise market power. The certification should be presumed granted within 30 days unless the Commission makes a finding within that period that the standard has not been met.

The Commission should not require the LECs to present a further analysis of supply and demand responsiveness or other showings in order to achieve non-dominant status. Such a process would be time consuming, and it would be an unnecessary burden on the Commission and the industry.

X. Conclusion

It is essential that the Commission establish a regulatory framework for the transition to competition in the local exchange and interstate access markets. NYNEX has proposed a framework not only for establishing pricing flexibility within the price cap rules, but also for purposes of access charge reform and the establishment of productivity standards in other proceedings. The Commission should adopt this proposal to give all parties a predictable regulatory environment in which to make their business plans.

Respectfully submitted,

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